Supreme Court, U. S.
FILED
JUN 18 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-735

SEARS, ROEBUCK AND CO.,

Petitioner,

vs.

SAN DIEGO COUNTY DISTRICT COUNCIL OF CARPENTERS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

SECOND SUPPLEMENTAL BRIEF ON BEHALF OF PETITIONER

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This supplemental brief on behalf of Petitioner, Sears, Roebuck and Co. ("Sears") is filed to address this Court's decision in *PruneYard Shopping Center* v. *Robins,* No. 79-289, decided on June 9, 1980.

The instant case presents a factual record dissimilar to that posed in *PruneYard*. Here, unlike *PruneYard,* union picketing of a single freestanding store is involved.[1] Here, unlike *Prune-*

1. The "shopping center" at issue in *PruneYard* was a large and specialized establishment covering "approximately 21 acres—five devoted to parking and 16 occupied by walkways, plazas, sidewalks, and buildings that contain[ed] more than 65 specialty shops, 10 restaurants, and a movie theatre." Sl. Op., at 1. Unlike *PruneYard,*

(Footnote continued on next page.)

Yard where a State proclaimed access privileges generally applicable to all messages, California, by virtue of the Moscone Act, Cal. Code of Civil Procedure, § 527.3, has dictated a specific message. The very "danger of governmental discrimination for or against a particular message" (Sl. Op., at 12), found absent in *PruneYard,* is presented in this case. Here, too, unlike *PruneYard,* Sears has openly disagreed with respondent's message. Finally, unlike *PruneYard,* where the shopping center was permitted to invoke reasonable time, scope, and circumstance limitations, in this case, under the Moscone Act, California has granted open-ended access to labor picketing without any means of control or remedy by the property owner.

The instant case thus raises questions not presented in *PruneYard,* but which warrant resolution. Indeed, the present case provides a desirable vehicle for the Court to resolve in a like, but far more prevalent, circumstance, the legitimacy of union trespassory picketing against a freestanding store. See, *e.g., Central Hardware Co.* v. *N. L. R. B.,* 407 U. S. 539 (1972). Additional issues concerning federal preemption, which were not raised in *PruneYard,* are also presented in this case.

(Footnote continued from preceding page.)

Sears' store is a single store "located in the center of a large rectangular lot", with the building "surrounded by walkways and a large parking area." *Sears, Roebuck and Co.* v. *San Diego County District Council of Carpenters,* 436 U. S. 180, 182 (1978). "Significantly different questions" from those in *PruneYard* are presented where, as here, "a State authorize[s] strangers to picket or leafleteer in privately owned, freestanding stores and commercial premises." Sl. Op., Powell, J., concurring, at 1.

CONCLUSION

For the foregoing reasons, as well as those set forth in Sears' Petition, Response Brief, and Supplemental Brief, this petition for writ of certioriari should be granted.

Respectfully submitted,

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